

EXHIBIT 16

Filed Under Seal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Case No. 0:18-cv-01776-JRT-HB

IN RE PORK ANTITRUST LITIGATION

This Document Relates to: All Actions

HIGHLY CONFIDENTIAL

REMOTE TESTIMONY OF DR. RUSSELL MANGUM

JULY 13, 2022 - 9:00 A.M. PDT

JOB NO. 2022-850362

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL
2 affiliated, meaning they have no business
3 relationship or interaction with them
4 ever?

5 Q You agree, Dr. Mangum, that
6 there are independent hog growers who sell
7 hogs to the defendants that the defendants
8 and alleged co-conspirators this case do
9 not own, right?

10 A Oh, oh, yes. I talk about
11 that in my report.

12 In other words, I could only
13 say no to that if I thought that the
14 packer market was 100 percent vertically
15 integrated, which clearly it's not, as I
16 talk about in my report. There are
17 independent growers.

18 Q And many of the defendants
19 and alleged co-conspirators this case are
20 not anywhere near a hundred percent
21 vertically integrated, right?

22 MR. POUYA: Objection to form.
23 Vague. Lacks foundation.

24 THE WITNESS: I don't believe
25 that the defendants which are

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL
2 packers and sell things in the pork
3 market, I don't think any of them
4 are close to a hundred percent
5 vertically integrated in the formal
6 sense they own and sell just for
7 themselves. No, I don't think
8 there's any one close to
9 100 percent.

10 BY MR. REISER:

11 Q Some of them are close to a
12 hundred percent in terms of buying hogs
13 from somebody other than their company,
14 right?

15 A I think so. But it gets
16 back, you know, to the questions you were
17 asking me about percentages for certain
18 entities, and if I would be surprised that
19 number is for Hormel and Tyson, and I just
20 don't have those numbers.

21 But I do know that, as I
22 describe in my report, there are packers
23 that are much more heavily vertically
24 integrated and some that are not very
25 vertically integrated at all -- formally

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 by the idea of, you know, owning, raising
3 for themselves, and then basically
4 internally supplying the hogs for
5 themselves when they, you know, make
6 things to sell in the pork market.

7 Q Do the independent hog
8 growers who sell hogs to the defendants
9 that they otherwise don't own, sell to
10 just one defendant?

11 MR. POUYA: Objection to form.
12 Vague. Foundation. Compound.

13 THE WITNESS: There can be
14 practices where you might say for a
15 period of time it could be that a
16 relationship -- might look like,
17 this farmer, this grower, really
18 mainly works with that defendant,
19 but there is a lot of swapping. I
20 would not generally say that we get
21 these direct match ups that kind of
22 retain for long time. But it
23 depends on the practices.

24 As I mentioned in my report,
25 you have got location issues about

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 depending on where a grower is and
3 there are shipping costs involved
4 and who are the possible purchasers
5 of the hogs, it's not as if they
6 have equal access economically,
7 even, to be selling to everyone.

8 But I do understand that it's

9 not uncommon for farmers to have

10 more than one packer that they

11 would sell to.

12 BY MR. REISER:

13 Q What do you mean by
14 "swapping"?

15 You just referred to swapping
16 in your answer. Can you elaborate on what
17 that means?

18 A I don't remember where I used
19 the word swapping, but I think I just
20 meant that there might be a practice where
21 some farmer sells to so and so and they
22 have a practice for a while, and then they
23 make a change.

24 And then it might be that
25 they add someone else, retaining the

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL
2 original purchaser or maybe they make a
3 switch. I think that's all I meant. I
4 don't remember where I used that in my
5 past answer.

6 Q You mentioned the Maschhoffs
7 earlier, do you remember mentioning that
8 company?

9 A Yeah, I remember it was an
10 answer to a question about growers, right?
11 -- who are the entities, the larger
12 growers that raise hogs and sell the hogs
13 you call market hogs.

14 Q And the Maschhoffs is one of
15 the larger entities that sells and raise
16 hogs; is that right?

17 A I do think of them as a
18 prominent entity. I don't remember the
19 relative sizes. I haven't memorized, that
20 as far -- if I hear -- I was saying
21 "Maschhoff," so I am obviously missing a
22 consonant in there, if you're better
23 informed than I am.

24 But I do know they show up in
25 documents and in the hog growing industry

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 at 11:16 a.m. and Testimony

3 Recommenced at 11:32 a.m. PDT.)

4 THE VIDEOGRAPHER: The time is
5 11:32 a.m. We are now back on the
6 record.

7 BY MR. REISER:

8 Q Welcome back, Dr. Magnum.

9 Did you discuss the substance
10 of your testimony with anyone during the
11 break?

12 A I did not.

13 Q You're opining in this case
14 that there was a conspiracy to reduce the
15 supply of pork, correct?

16 MR. POUYA: Objection to form.

17 THE WITNESS: I don't have any
18 legal opinions and I don't have the
19 opinion that there was a conspiracy
20 or violation of Sherman Act, for
21 example.

22 My opinions are stated in my
23 expert report but I don't have that
24 liability opinion.

25 BY MR. REISER:

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 Q You're opining that --
3 withdrawn.

4 You're accepting that
5 liability will be established on a
6 conspiracy to reduce the supply of pork
7 and opining on what the damage is for such
8 a conspiracy would be, correct?

9 MR. POUYA: Objection.

10 Misstates the testimony. Lacks
11 foundation. Misstates the report.

12 THE WITNESS: My report does
13 list all my opinions. But I
14 understand that there's alleged to
15 be one conspiracy to raise prices,
16 right? -- I know the mechanism as I
17 describe in my report related to
18 that relates to output and
19 quantities.

20 But that's my understanding of

21 the allegations is that a

22 conspiracy -- price-fixing

23 conspiracy. I am assuming there

24 will be a finding of liability for

25 that conspiracy.

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 BY MR. REISER:

3 Q What is your understanding of
4 the objects of the conspiracy that you are
5 assuming liability will be established as
6 to for purposes of your report?

7 A I don't understand that
8 question.

9 Q What part of it don't you
10 understand?

11 A Well, I don't know what you
12 mean "objects." Like, I am assuming
13 liability and you're wanting to know about
14 the objects of that liability. I don't
15 understand what you're talking about.

16 Q Well, what is the conspiracy
17 for which you're assuming liability will
18 be established for purposes of your
19 report?

20 MR. POUYA: Objection. Asked
21 and answered.

22 THE WITNESS: Yeah, that the
23 conspiracy, as I understand, comes
24 from the Complaint, right? -- and
25 from the arguments in the

180

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 Lacks foundation. Legal

3 conclusion.

4 THE WITNESS: No. This cannot
5 be taken all by itself as a full
6 description of a supposed
7 conspiracy to reduce pork.

8 My understanding is the
9 conspiracy was to raise prices, the
10 price-fixing conspiracy, which
11 included many elements.

12 This is one part of what I
13 understand is alleged, and I
14 describe it here. But it's not the
15 full description of a separate
16 conspiracy. There is one alleged
17 conspiracy to raise prices related
18 to information sharing, right? --
19 also related to output.

20 So there's many elements of
21 it. But you can't break apart each
22 element and then want to call that
23 a separate conspiracy.

24 BY MR. REISER:

25 Q I understand what you are

181

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 saying.

3 But you're accepting that
4 liability will be established for a
5 conspiracy that includes a reduction of
6 the number of hogs entering the
7 marketplace, right?

8 MR. POUYA: Objection to form.

9 THE WITNESS: I think you are

10 trying to expands what I have

11 assumed. I think you are trying to

12 expand that there will be a finding

13 of liability and it must be based

14 on parts A, B, C, and D. I haven't

15 gone that far.

16 I think there will be a

17 liability finding that sufficient

18 elements were necessary for a trier

19 of fact to find liability. I

20 understand what the Complaint says,

21 and the elements of the conspiracy.

22 I have described them.

23 But I think you are trying to

24 move beyond my assumption to

25 include necessary elements, and,

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 you know, what, I don't have a

3 legal opinion about what it means.

4 But what legally would be needed

5 for a finding of liability, I am

6 assuming it was determined that was

7 met and a finding of liability

8 existed.

9 BY MR. REISER:

10 Q What is the "that" that was
11 in that for a finding of liability that
12 you are referring to?

13 A It's something I don't have a
14 legal opinion on.

15 Q So what is the purpose of
16 paragraph 74 through 79 of your report?

17 A Well, 74 through 79 talk
18 about one element that's parts of my --
19 got a paragraph 73, labeled with an F.
20 It's got sub elements in it.

21 And so -- by the way,
22 paragraph 73 which is labeled F, is a sub
23 element of other analysis I do. So it's
24 covering one of the elements that I
25 understand from reading the Complaint of

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 saying what's been described as the
3 conspiracy and I am giving information.

4 In this case, it relates to
5 number of hogs in the marketplace, right?
6 -- this is paragraph 74 through 79.

7 Q And if there was no reduction
8 of hogs entering the marketplace, is it
9 your testimony that that would have no
10 impact on your opinions in this case?

11 MR. POUYA: Objection to form.

12 THE WITNESS: I don't have an
13 opinion. You're asking me is it my
14 opinion that I can take out an
15 element and that must necessarily
16 change a finding of liability, and
17 I think that's just wrong. Because
18 I have assumed that someone has
19 already determined there were
20 enough elements found for
21 liability.

22 And then I have looked at the
23 damages, right? -- a pricing model,
24 one of the things I do is I look at
25 the effects of that. I believe my

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 general description, right. I do talk
3 about it as a way it's feasible.

4 But in my report is talk
5 about the idea that -- there could be
6 reasons why you would see exports growing
7 relative to domestic. But -- the
8 implication would be that the prices that
9 can be earned, and I do show -- I do
10 identify evidence that was not the case,
11 that even though values were lower
12 relative, right? -- that you still had
13 increases in pork -- for exports, that is;
14 pork exports.

15 So I do talk about that in my
16 report.

17 Q Do you have an opinion about
18 how much pork exports were increased?

19 MR. POUYA: Same objection.

20 Limited to his opinions that have
21 been put forth and relied upon for
22 the purpose of his class
23 certification report.

24 THE WITNESS: I do not have a
25 quantification of the amount by

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 which exports were increased

3 relative to a competitive volume

4 that I rely on for the opinions I

5 have expressed in my report.

6 BY MR. REISER:

7 Q I take it, then, you are not
8 opining for purposes of your current
9 report, Mangum Exhibit 1, what exports
10 would have been, if not for the alleged
11 conspiracy, right?

12 MR. POUYA: Objection.

13 Foundation.

14 THE WITNESS: Yes. If your
15 word means "what" means a quantity.

16 Like I said, I don't have an
17 analysis that resulted in a
18 quantity of but-for pork exports
19 that I am relying on for the
20 purposes of my expert report at
21 this point.

22 BY MR. REISER:

23 Q At this point, are you
24 opining that every export of pork from
25 2009 to 2018 was part of an

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL
2 anti-competitive conspiracy to increase
3 the price of pork in the United States?

4 A No.

5 Q As part of your analysis in
6 this case, did you consider the economic
7 climate for hog production leading up to
8 2009?

9 MR. POUYA: Objection, form.
10 Foundation.

11 THE WITNESS: I do talk about
12 the industry before 2009. I talk
13 about historical trends, you know.
14 There are sections in my report
15 that talk about it. And I did
16 study that industry to inform me
17 about at least the elements that I
18 included in my report.

19 BY MR. REISER:

20 Q What is your understanding of
21 what plaintiffs alleged a conspiracy
22 period in this case to be?

23 A It's my understanding that,
24 as I describe in my report, the conspiracy
25 period goes from January in 2009 and it

270

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 But I have looked at costs, right?

3 -- and the idea of raising hogs and
4 efficiency of raising hogs and the
5 cost of vaccines, the cost of not
6 having the vaccine. All those are
7 captured by the costs in the data I
8 have included.

9 But I don't have a specific
10 analysis of circovirus by itself
11 that I am relying on.

12 BY MR. REISER:

13 Q So you don't think the impact
14 of the widespread of availability of the
15 circovirus in mid-2007 is relevant to any
16 of the opinions you are offering in this
17 case?

18 MR. POUYA: Objection.

19 Misstates the testimony.

20 THE WITNESS: I actually said
21 the opposite. I said it effects
22 costs. I control costs. It
23 increases productivity, right? --
24 and what it means to have expenses
25 and productivity and things for

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 making hogs flowing through the
3 pork. It's the opposite of what
4 you said.

5 I have included variables that
6 I think capture that in my
7 analysis.

8 BY MR. REISER:

9 Q Did you control for
10 circovirus specifically in your model?

11 A I did not.

12 Q Why not?

13 A I don't believe that it needs
14 its own separate controlling for that
15 virus in my model.

16 Q And why not?

17 A You know, I think you have
18 got a theory you think it does. But I am
19 not going to -- if I don't believe
20 something, you asking why not, right? --
21 isn't something I am going to answer.
22 Because I don't know where you are going.

23 I think you have a theory and
24 evidence to come to a conclusion. I think
25 you're somehow wanting me to engage and

272

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 outline that and come to a conclusion.

3 But you asked if I did something and I

4 didn't. I think I got the proper

5 variables, but I can't answer a why not

6 question. And I don't know what it means

7 to do that.

8 Q I am just trying to

9 understand what your analysis is and isn't

10 and I take it from your answer that

11 circovirus vaccine availability was not

12 one of the variables you considered but

13 you're testifying now you didn't believe

14 and didn't do so.

15 Did I get anything wrong

16 there?

17 MR. POUYA: Objection.

18 Misstates the testimony.

19 THE WITNESS: I don't believe

20 I need a separate circovirus

21 variable in my analysis. That part

22 is correct.

23 That doesn't mean that I

24 haven't controlled for things that

25 effect the costs productivity, and

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 the raising hog process, all of
3 that. That's not true. I have
4 control for that but I don't
5 believe I need also a separate
6 variable for circovirus vaccine
7 availability.

8 BY MR. REISER:

9 Q What impact, if any, did the
10 global financial crises that began in 2008
11 have on hog growing?

12 MR. POUYA: Objection.

13 Foundation.

14 THE WITNESS: I don't have an
15 opinion specifically. I have not

16 conducted an analysis about the
17 financial crisis and its impact on
18 the hog market specifically to form
19 my opinions.

20 I have control for the
21 elements which define large
22 rescissions, great recessions,
23 financial crisis, involving demand,
24 involving what it did to costs. I
25 control for that. Right? CPI.

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 But I don't have an analysis
3 that specifically looks at the hog
4 market.

5 BY MR. REISER:

6 Q Is it fair to say that the
7 global financial crisis that began in 2008
8 led to a weaker demand for pork?

9 MR. POUYA: Objection.
10 Foundation.

11 THE WITNESS: Well, the global
12 financial crisis, part of that
13 relates to things such as overall
14 demand, right? -- GDP, I control
15 for. Right. I got controls for
16 price level inflation.

17 I believe that there's effects
18 from whether it's within the
19 context of large swings that were
20 noticed during the financial crisis
21 or the Great Recession, before that
22 there was expansory period, right?
23 -- there's a recovery period
24 afterwards. I control for those
25 macroeconomic variables in my

281

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 therefore, it must be illegal, and,
3 a-ha, I found someone that said
4 there should be less hogs,
5 therefore, Mangum is wrong.

6 It's completely incomplete
7 characterization. It's not about
8 any liquidation that's bad. It's
9 not about a reduction or an
10 increase in hogs or increase in
11 pork production. It's the levels
12 relevant to what they would have
13 been.

14 So you can't look at this and
15 say this is necessarily any
16 information that's relevant for the
17 analysis I have done. It seems
18 inconsistent -- I'm sorry, it seems
19 consistent -- but it isn't enough
20 information to be useable for the
21 purposes that I form my opinions.

22 BY MR. REISER:

23 Q You are not opining in this
24 case, though, that the reduction or
25 increase -- withdrawn.

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 You are not opining in this
3 case what -- how many sows or hogs there
4 would have been, if not for the alleged
5 conspiracy, right?

6 MR. POUYA: Same objection as
7 before. I will instruct the
8 witness to testify as to what he's
9 relied upon for purposes of class
10 certification.

11 THE WITNESS: I don't have any
12 analysis of a but-for number of
13 hogs that I rely on for my opinions
14 in this case.

15 BY MR. REISER:

16 Q Are you aware that from 2007
17 to 2009, it was one of the worst markets
18 years for hog growers ever?

19 Are you aware of that?

20 MR. POUYA: Objection. Form.
21 Foundation.

22 THE WITNESS: I am aware of
23 the trends in feed costs, and aware
24 of the trends in demand in the
25 economy. I know it was a very

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 tough time for the, generally --

3 for the economy, generally.

4 So I am also aware that what

5 was experienced in the pork

6 industry isn't necessarily immune

7 or different from many other

8 markets, many other -- you know,

9 markets and sectors of the economy

10 generally.

11 BY MR. REISER:

12 Q Did you consider for purposes

13 of your analysis in this case that the

14 pork industry in 2009 was undergoing the

15 longest and deepest economic losses in

16 20 years?

17 MR. POUYA: Objection. Form.

18 Foundation.

19 THE WITNESS: The demand and

20 the costs and those elements which

21 are descriptive of things like

22 recessions, even financial crisis,

23 those are, yes, all controlled for

24 in my model -- in my pricing model,

25 when I evaluated prices in this

296

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 high, and they also don't fully
3 react when costs are dropping.

4 And so they have got a longer
5 term growth. And it could be
6 difficult, but because of the
7 symmetric nature how that happens,
8 it's not as straightforward as
9 putting on blinders and say let's
10 just decide about today or last
11 year and ignore what's been
12 experienced.

13 So you need to know -- you
14 need to know more about the
15 industry to make a facile
16 conclusion about I see a number
17 that must mean A. It could be more
18 complicated that that economically.

19 BY MR. REISER:

20 Q And one of the things that is
21 relevant to the economics of it would be
22 the fact there are more hogs because a
23 vaccine that is reducing hog mortality,
24 right?

25 MR. POUYA: Objection.

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 Speculation. Foundation.

3 THE WITNESS: I am not sure I
4 understood that.

5 Are you suggesting that
6 vaccine existence might have
7 contributed to this the profit
8 numbers that are being mentioned
9 here?

10 BY MR. REISER:

11 Q I'm asking whether it could
12 have.

13 MR. POUYA: Objection.
14 Speculation. Foundation.

15 THE WITNESS: The economy
16 markets, they don't offer in a
17 fixed static mode. If someone
18 realizes they are getting more out
19 of something, then they adjust the
20 production process.

21 It would be economically
22 irrational to say it doesn't matter
23 what happens, I just keep doing
24 what I did yesterday out of
25 inertia, right? Because, of

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 course, that could end up with,

3 Wow, I have way too many hogs

4 because I didn't have, you know,

5 nearly as many that let's say died

6 because of a virus.

7 The rational thing would be to

8 automatically adjust, right? -- if

9 you find something, it's like when

10 you buy a new machine that makes

11 product twice as many, you wouldn't

12 say well, for years I have been

13 running my machine for certain

14 hours a day. Someone will say no,

15 we can react because something has

16 changed what it is going to do is

17 decrease our machinery costs per

18 unit. So it's reflected in costs,

19 right.

20 But, yeah, it would be

21 irrational to think statically like

22 you suggest.

23 BY MR. REISER:

24 Q Do you know one way or the

25 other whether hog growers anticipated the

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 question again, I have seen it. Both up
3 and down but I have seen them.

4 Q You have seen that they
5 profited on the margin between the higher
6 price for pork versus the higher price
7 they paid for the primary input which is
8 the hog?

9 MR. POUYA: Objection.

10 Foundation.

11 THE WITNESS: What I have seen
12 is that prices and costs move
13 together. Whether costs are
14 dropping and prices are dropping or
15 costs are going up and prices are
16 going up.

17 That's where I noticed I have
18 seen that relationship. So there's
19 a response that when costs go up,
20 it also means prices tend to go up.

21 BY MR. REISER:

22 Q But you haven't seen any
23 indication in anything you have analyzed
24 for purposes of your report in this case,
25 Mangum Exhibit 1, that hog growers --

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL
2 withdrawn.

3 You haven't seen any
4 indication in anything you have analyzed
5 for purposes of your report in this case,
6 Mangum Exhibit 1, that hog packers were
7 trying to buy hogs at higher prices so
8 that they could re-sell pork at higher
9 prices?

10 MR. POUYA: Objection --
11 objection. Form. Misstates the
12 testimony.

13 THE WITNESS: I don't know
14 what that means, trying to buy at
15 higher prices. Is that like me
16 going to Thrifty and saying no, no,
17 no, I don't want to buy the candy
18 bar for 1.25, can I pay 1.50.

19 Nobody tries to buy at higher
20 prices. But they might say, well,
21 the thing I usually buy, the price
22 is higher, am I willing to pay that
23 because I believe the market
24 supports a higher price at my end?
25 And I have seen that's what's

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 happened.

3 Costs -- costs aren't always
4 the same here. They move quite a
5 bit, up and down, and we also see
6 changes in prices up and down.

7 BY MR. REISER:

8 Q To your knowledge, have
9 plaintiffs alleged in this case that
10 packers were buying hogs at higher prices
11 so they could re-sell pork at higher
12 prices?

13 A I don't see that as an
14 allegation. That's the reality of
15 economics. That's what happens.
16 People -- it's buy low and sell high.

17 Notice no one ever talks
18 whether there's an increase of those.
19 It's buy low and sell high. Right? So it
20 wouldn't be an allegation that that
21 people, Hm, prices are higher, but they
22 have been willing to buy anyway because
23 they believe they can raise prices.

24 That wouldn't be an
25 allegation, that would be the way markets

433

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 small do they make, if at all. They tend
3 to send these sets, how many medium, how
4 many small, how many larges. Right.

5 Just because you say, well, I
6 only have out of every 50 shirts I send, I
7 am going to send one or two extra-extra
8 small, there is not that many people. If
9 I am wondering about how much do I import
10 versus export -- I might have the same
11 level of demand in and outside the US, I
12 wouldn't use the highly just because it's
13 small.

14 That's what I thought of when
15 you mentioned this fringe pork products.
16 It could be relatively very small, but
17 that doesn't necessarily mean that
18 comparing across countries, we call it
19 highly versus not highly in the US versus
20 the foreign country.

21 It depends which country.
22 There are sometimes there's a product that
23 is desirable more in other products. The
24 countries that are big that I talk about,
25 by the way, for exporting, tend to be also

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL
2 in North America. So we haven't got the
3 same type of big difference in demands,
4 than we might have if we have if it's
5 something like in Asian country. So all
6 that comes in the mix.

7 Q China is one of the biggest
8 exporting -- withdrawn.

9 China is one of the big
10 countries that imports US pork, right?

11 A It is a big country
12 regardless of what we are talking about
13 China is a big country. I know I have a
14 table where I talk about the large volumes
15 or at least I kind of -- a graph. Well,
16 if we are exporting, where is it going?
17 And China is on there. If I recall, there
18 were other countries that were bigger at
19 least for a large portion of the time
20 period.

21 Q Did you consider the fact
22 that in China, pork hearts, tongue,
23 stomachs, and entrails are part of their
24 culinary culture again --

25 (Simultaneous Crosstalk.)

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 A I am aware of that, yeah.

3 That's what I mentioned a while ago when I
4 said there's some products that in the US,
5 they are there, they are sold, but yet
6 they might be seen as more desirable or at
7 least more common type of consumed thing
8 in a foreign country.

9 Q And your export analysis
10 includes exports of hearts, tongues,
11 stomach, entrails to China, right?

12 A Yes. The documents and data
13 I have referred to talk about pork product
14 exports, right? -- all of them, which I
15 don't limit, as I said, to the class
16 products here.

17 Q For purposes of your expert
18 analysis, did you request export data by
19 cut so that you could do an analysis of
20 whether the increased exports you observed
21 were actually as to exports pertaining to
22 the cuts that are at issue in the direct
23 purchaser plaintiffs' Complaint?

24 MR. POUYA: Objection. Vague.
25 Foundation.

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 THE WITNESS: I don't do a,
3 quote/unquote, export analysis like
4 you described. I didn't set out to
5 do an analysis to say what would
6 have been the but-for level of
7 exports. As I mentioned before, I
8 don't do that.

9 What I have pointed out is
10 statements by the defendants where
11 they are talking generally about
12 the US market, and they are saying
13 what we need to do -- one thing we
14 need to do get prices up is,
15 exports, exports, exports.

16 They don't say, well, that may
17 be meaningless, unless we are
18 talking about tongues -- the things
19 I think your question suggest is
20 they only meant strange products.
21 That is not borne out with the
22 documents that I have pointed out
23 in my report.

24 BY MR. REISER:

25 Q But it's fair to say that

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 So it would be incomplete and
3 incorrect to say if I have -- just because
4 I have an exchange rates, let's say, that
5 makes a currency, you know, more favorable
6 in some foreign country to buy US
7 products. If that doesn't rise to the
8 level of making the sale in that foreign
9 country, look, better than keeping it
10 domestically, then that would be an
11 irrelevant change in exchange rates.

12 (Simultaneous Crosstalk.)

13 So it's got to work to flow
14 to the value to the people in the US to
15 make that decision. That's the analysis I
16 have done. And I wouldn't say that that's
17 not irrelevant to the exchange rates.

18 But the only way it would
19 be -- the only way it would be relevant is
20 if exchange rates in some foreign company
21 changed such that demand for US exports
22 increased so much that the value of the US
23 exports to a US producer increased
24 relative to keeping it domestically. And
25 that did not happen in the pork industry

DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

as I highlighted.

Q Are you aware that the US
over time in the 2009 to 2018 timeframe
has incentivized exports of agricultural
products?

A Yes, I am aware of that.

Q Including pork?

A Yes.

Q Could the observed increase
in exports of pork products be due to the
facts of that incentives -- withdrawn.

I am going to ask a coherent
question.

Could the increase in exports
that you observed over time be caused by
the US incentivizing exports of
agricultural products, including pork?

MR. POUYA: Objection.

Foundation. And speculation.

THE WITNESS: Well, incentives

are part of what could affect

demand, one thing. But if the

incentives still don't rise the

value of exporting to be higher

447

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 than selling a product

3 domestically, although they could

4 happen, that wouldn't explain a

5 shift. Right?

6 Now, incentives might be

7 something that simply means, well,

8 let's tear down trade barriers.

9 Like, maybe there was a way that

10 people would be willing to pay a

11 higher price, but they couldn't

12 legally buy it because of quota or

13 something like that. Right. That

14 might do it as well.

15 But it's all got to flow down

16 to what is the value for domestic

17 producer of keeping it domestic or

18 selling it international. So even

19 though you're talking about things

20 that might affect that value, I

21 went right to the value. And

22 whatever it might have been that

23 affected the relative value, that's

24 what I looked at in my report.

25 BY MR. REISER:

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 don't remember if that's the only
3 place I would mention contracts.

4 I mean this is a place in my
5 report where I talk about contract
6 terms. I list them. But I do
7 remember talking about contracts in
8 other places.

9 For example, I have cited
10 contracts for having different
11 lengths of time. I have cited
12 contracts for times where the
13 packers have the ability to buy the
14 option if the grower grossed more
15 than what is listed, they get to
16 buy it, they have that option. I
17 have listed examples when contracts
18 can be terminated early.

19 So there are several other
20 places in my report where I cite to
21 contracts besides this location.

22 BY MR. REISER:

23 Q It's not your opinion, is it,
24 Dr. Mangum, that a packer that buys all of
25 its hogs has exactly the same ability to

461

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 influence hog growing as one that does
3 not, is it?

4 A I think you said -- I think
5 you want me to compare two things; a
6 packer that buys all of its hogs versus
7 one that does not.

8 I mean, compared to a packer
9 that buys 99 percent, 98 percent, and
10 someone who buys a hundred percent, I
11 might say I don't think there's a
12 meaningful distinction. I mean, the
13 bigger comparison would be somebody who
14 buys all their hogs and somebody who grows
15 all their own, right? -- obviously not
16 identical.

17 But as I described and cited
18 the Carleton and Perloff, depending on the
19 terms of contracts which put a lot of
20 requirements, they approximate -- they can
21 approximate this formal vertical
22 integration.

23 Q Depending on the contractual
24 terms, right?

25 A Correct. Depending on the

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL
2 contractual terms.

3 Q But you are not opining that
4 a contract stating what a packer will buy
5 and how it will buy it is the same as
6 owning the hog.

7 You're just saying it
8 approximates owning the hog, right?

9 MR. POUYA: Objection.
10 Misstates the testimony.
11 Foundation.

12 THE WITNESS: Well, I don't
13 mean to give any assessment that is
14 a legal assessment or opinion. So,
15 owning to some extent is a legal
16 thing.

17 Economically, I do believe
18 it's feasible with contracts. For
19 example, a contract that simply
20 says, you know, I get to buy from
21 you something in a year, right? Or
22 maybe starting in a month for a
23 year with nothing else. That's
24 very different than one that says,
25 I get to buy this from you but

469

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 to show that I understood that
3 these are characteristics in the
4 marketplace, that may not be --
5 that I know from personal
6 experience are not common across
7 all markets.

8 But for my purposes to
9 identify there are these contract
10 terms, they occur, there are
11 various elements, what I found and
12 highlighted met my needs for what I
13 was looking for the conclusions I
14 was coming to.

15 BY MR. REISER:

16 Q Are you familiar with the
17 Packers and Stockyards Act, Dr. Mangum?

18 A I know it exists. I have
19 heard reference to it, but I don't know
20 much of the elements about it.

21 Q Did you know that it requires
22 the USDA to maintain a library or catalog
23 of each type of contract offered by
24 packers to swine producers for the
25 purchase of all or part of the producer's

470

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 production of swine?

3 MR. POUYA: Objection.

4 Foundation.

5 THE WITNESS: Maybe. I can't
6 say for certain. Like I said, I am
7 not familiar with all the elements
8 of that act.

9 BY MR. REISER:

10 Q Did you know that there's a
11 USDA swine contract library that details
12 all of the terms that we are talking about
13 here --

14 (Simultaneous Crosstalk.)

15 MR. POUYA: Same objections.

16 THE WITNESS: It could be.
17 But I have not relied on that
18 existence in forming the opinions
19 that I have rendered in my reports.

20 BY MR. REISER:

21 Q And my question is, why did
22 you rely on a selection of contracts as
23 opposed to an inventory of all contracts?

24 MR. POUYA: Objection. Asked
25 and answered.

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 THE WITNESS: Well, these

3 contracts that I found met my needs

4 of finding examples of the

5 contracts that are out there.

6 I also know that it wasn't the
7 only ones I found, that I was aware
8 there were many like this from what
9 I learned in discovery.

10 As I said, I don't remember
11 what I knew of in the past about
12 this library or depository you
13 mentioned. If it's only the type
14 of contracts that are listed, I
15 think having actual contracts, I
16 would look for those first just
17 myself, as opposed to looking for
18 templates of types of things. But
19 I don't remember specifically what
20 is in the library.

21 BY MR. REISER:

22 Q Well, the library contains
23 all the terms. I can show it to you, but
24 that would be a waste of time because you
25 haven't reviewed it and you will be

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 instructed not to talk about it.

3 Let me ask you this,
4 Dr. Mangum: If you wanted to know how
5 common the terms that you're describing in
6 paragraph 111 are, why wouldn't you look
7 at a repository that collects and outlines
8 in very painstaking details all of those
9 terms?

10 A You know, I can't comment. I
11 don't know what is in this depository
12 you're talking about. And I don't know
13 that having something there would have
14 given me any more substantiation for the
15 conclusions I came to.

16 Q You don't know one way or the
17 other, right?

18 A Nothing you have mentioned
19 today leads me to think that I should have
20 done something else compared to what I did
21 to rely on for my opinions.

22 Q Let's pull up paragraph 147
23 -- actually, we can just take down the
24 report. No need to do that.

25 One of your opinions,

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 Foundation.

3 (Whereupon a Discussion is
4 Held Off the Record.)

5 THE WITNESS: Well, the pork
6 market, which is US products only
7 that I looked at, is not a function
8 of what is exported. It's a
9 function of what remains
10 domestically in a marketplace.

11 I have looked at in my model,
12 the pricing model, I have included
13 factors that supply and demand side
14 factors, that include the price of
15 domestic pork. That's what I have
16 included.

17 So I don't look at exports of
18 things that would affect markets
19 for exports. I look at what is
20 going on domestically.

21 BY MR. REISER:

22 Q You did nothing in your
23 models to distinguish between defendants
24 who purchase nearly all of their hogs from
25 growers on the one hand from those who do

489

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 not on the other hand, right?

3 MR. POUYA: Same objection.

4 Vague. Foundation. Incomplete
5 hypothetical.

6 THE WITNESS: I think you are

7 asking if there is a variable that

8 somehow measures degree of vertical

9 integration. And no, I did not

10 include it. I don't see as

11 relevant a vertical integration

12 variable in my pork market pricing

13 model.

14 BY MR. REISER:

15 Q Your model evaluates impact
16 in damages over the 2009 to 2018
17 timeframe, right?

18 A Well, the period of my
19 conspiracy indicator variable, right? --
20 that's what I call the class period in my
21 report. That does go from January 2009 to
22 the end of June 2018.

23 Q And you arrived at a single
24 overcharge percentage for each pork
25 product in the plaintiffs' class

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 definition over the course of that roughly
3 nine-year timeframe, right?

4 A Not exactly. But it's each
5 of -- I think it was six or eight, I have
6 to count, distinctive counts. Not each
7 product. But, for example, loin, ham,
8 right? -- shoulder, belly pork, et cetera.

9 Q One number for the entire
10 2009 to 2018 timeframe, right?

11 A Correct.

12 Q We talked earlier about the
13 plaintiffs being limited by statute to
14 damages after June 29, 2014.

15 Do you remember that
16 discussion?

17 A I do.

18 Q Doesn't the way you have
19 modeled the damages hold defendants
20 accountable for damages that they are by
21 statute from recovering?

22 A No, not at all. I mean,
23 damages are a function of applying only a
24 certain time period. So in my opinion,
25 the proper method is to come up with an

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 wouldn't your model point to a higher
3 overcharge percentage over the entire 2009
4 to 2018 timeframe?

5 MR. POUYA: Same objections.

6 THE WITNESS: Well, what I
7 have modeled is the effect of
8 what's been alleged as one
9 conspiracy. I don't know any
10 economic reason to think that a
11 judicial decision regarding statute
12 of limitations would be a barrier
13 point to say, well, let's look --
14 let's mandate the conspiracy to be
15 different during that -- I will say
16 economically arbitrary threshold.

17 So I think it is more
18 appropriate to look at the entire
19 conspiracy as alleged, since I am
20 assuming that is the conspiracy for
21 which liability will be found. But
22 I do find it's important to then,
23 when I am looking at damages, to
24 only apply it to the time period of
25 commerce that the court has

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 identified.

3 BY MR. REISER:

4 Q Hypothetically, if you
5 calculated an overcharge -- withdrawn.

6 Hypothetically if there is
7 was an overcharge on bacon of 80 percent
8 prior to June 29, 2014, and zero percent
9 from June 30, 2014, through the rest of
10 2018, wouldn't your model say that there
11 was an overcharge, even though there
12 wasn't any overcharge prior to June 29,
13 2014?

14 MR. POUYA: Objection.

15 Foundation. Speculation.

16 THE WITNESS: I haven't -- I
17 haven't performed any analysis that
18 could confirm what you are
19 suggesting. I am not aware of any
20 alleged conspiracy that would mean
21 those effects would be different.

22 I have come up with a model to
23 answer the question of someone
24 basically says we have news,
25 liabilities found, there was a

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 single conspiracy over the time

3 period. That's what my model could

4 answer. But I haven't done an

5 analysis that would enable me to

6 answer the question that you have

7 posed for the opinions that I have

8 formed.

9 BY MR. REISER:

10 Q You don't need to do any
11 analysis because it's just math, right?

12 If there is an overcharge on
13 bacon of 80 percent prior to June 29,
14 2014, and there's no overcharge after that
15 period, your math comes up with zero,
16 isn't it fair to say that your model would
17 say there was an overcharge even though
18 there was a zero percent overcharge after
19 June 29, 2014?

20 A Well, you have proposed
21 something that I don't know there's any
22 economical theory to back up it.

23 You can say, let's assume
24 Apple pays people to use their phones in
25 one year and then doubles their price the

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 next year, wouldn't that mean XYZ. I
3 wouldn't answer that question.

4 I would say, can you give me
5 some fleeting chance of economic reality
6 that would suggest that.

7 What I have done is I have
8 answered a question that I think would be
9 the question at hand, if somebody says,
10 hey, liability's just been found for this
11 conspiracy over this period, we need an
12 answer for the effect of the conspiracy.
13 So I have answered that question.

14 I have not looked at
15 something given what you have proposed in
16 the opinions in this case, I don't know a
17 reason why that would be logical or that
18 would be the outcome.

19 Q Do you agree 80 is more than
20 zero?

21 A I do agree that 80 is a
22 higher number than zero.

23 Q You chose 2005 to 2009 as a
24 benchmark period, right?

25 A Not really. I would have --

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 I would have gone further back. But I --

3 I did choose to go as far as I could with

4 the data that I have. But I didn't start

5 off by saying, I don't want anymore data.

6 I used what I was told was agreed upon

7 between the parties to be produced and I

8 used all I could.

9 Q So having more data would
10 have been better for you for purpose of
11 doing your analysis?

12 A I would be interested if
13 someone has any more information on any
14 topic that I have opined on. I believe I
15 had sufficient data to run the model that
16 I did over many, many years -- more than a
17 decade.

18 But as far as I didn't choose
19 to not go back further than 2005, I used
20 all that I could.

21 Q Do you agree if certain
22 events during the benchmarking period led
23 to lower pricing during that period, that
24 your model would predict higher damages?

25 MR. POUYA: Objection.

1 DR. RUSSELL MANGUM - HIGHLY CONFIDENTIAL

2 Foundation. Calls for speculation.

3 THE WITNESS: I disagree. I
4 believe I have the variables which
5 identify -- that identify relevant
6 factors that affect price over the
7 entire time period. And the way my
8 benchmark model was created was it
9 asks, after I include those
10 variables, right? -- is there still
11 something hanging on that also
12 explains a different price during
13 the conspiracy.

14 So I believe I have used the
15 right set of variables. I am
16 not -- I don't agree. I think if
17 you said -- I think you are
18 suggesting if there was some other
19 variable that was relevant, if I
20 used it. Well, I need to know what
21 that is to see if it makes logical
22 sense, if it applies to the theory
23 in the case. But I have included
24 all I am aware of that would be
25 relevant.